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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,670	01/15/2002	Gregory T. Kohler	655.01034(Index 979)	5278

7590 08/23/2005

WOOD, PHILLIPS, VAN SANTEN, CLARK & MORTIMER
SUITE 3800
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CHICAGO, IL 60661

EXAMINER

LEO, LEONARD R

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/047,670	Applicant(s) KOHLER ET AL. C	
	Examiner Leonard R. Leo	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) 2 and 15 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1, 5, 8, 11 and 13 is/are rejected.
 7) ☒ Claim(s) 3, 4, 6, 7, 9, 10, 12 and 14 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 10 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The response filed on June 10, 2005 has been entered. Claims 1-15 are pending, and claims 2 and 15 remain withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 8, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocher, Brogan or Turner et al in view of Dalo et al, Ryan et al or Ando.

Kocher, Brogan or Turner et al discloses all the claimed limitations except a flattened tube in a heat exchanger.

Dalo et al discloses a heat exchanger comprising a fluid coupling having a combined cap and tank assembly 10 connected to tube 14, wherein the tube may have a flat or round cross-section (column 1, lines 19-20) for the purpose of achieving desired flow and/or internal pressure requirements.

Ryan et al discloses a heat exchanger comprising a fluid coupling having a cap 26 and tank 14 connected to tube 18, wherein the tube may have a flat or round cross-section (column 5, lines 1-5) for the purpose of achieving desired flow and/or internal pressure requirements.

Ando discloses a heat exchanger comprising a fluid coupling having a combined cap and tank assembly 4 connected to tube 2, wherein the tube may have a flat or round cross-section

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(column 4, lines 36-40) for the purpose of achieving desired flow and/or internal pressure requirements.

Since Kocher, Brogan or Turner et al and Dalo et al, Ryan et al or Ando are both from the same field of endeavor and/or analogous art, the purpose disclosed by Dalo et al, Ryan et al or Ando would have been recognized in the pertinent art of Kocher, Brogan or Turner et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Kocher, Brogan or Turner et al a heat exchanger tube having a flat or round cross-section for the purpose of achieving desired flow and/or internal pressure requirements as recognized by Dalo et al, Ryan et al or Ando. As demonstrated by Dalo et al, Ryan et al and Ando, flat and round tubes are mere alternates of one another.

Regarding claims 11 and 13, the flattened or oval tubes of Dalo et al, Ryan et al or Ando would mate with a cavity having a corresponding shape in the devices of Kocher, Brogan or Turner et al.

Allowable Subject Matter

Claims 3-4, 6-7, 9-10, 12 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

The objection to the drawings under 37 CFR 1.84(p)(4) is withdrawn.

The objection to the specification is withdrawn.

Applicant's arguments have been fully considered but they are not persuasive. The position that fluid couplings employed in a removable and a brazed environment cannot be

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combined is not persuasive. There is no structural difference in the two types, in that, a tube is fitted with an adapting structure (i.e. cap) to mate with another structure (i.e. tank). It is clear to that one of ordinary skill in the art would recognize the structures of the prior art of record are clearly analogous and both relate to fluid couplings. Whether one type is required to be removable or semi-permanent by brazing is of no patentable moment in this instance.

Regarding applicants' remarks with respect to Kocher, Brogan or Turner et al, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the novelty of the instant invention is not solely based on the heat exchanger structure, rather the structure providing fluid coupling of components to define a heat exchanger.

The secondary references of Kocher, Brogan or Turner et al teach coupling components of a heat exchanger for tubes having either circular or flattened cross-sections. In response to applicants' argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the secondary references of Dalo et al, Ryan et al or Ando teach circular tubes and flattened tubes are obvious alternates of one another. There is no novelty in employing a known tube cross-

section with another known tube cross-section, especially when the prior art explicitly discloses the obvious substitutions. Refer to the grounds of rejection and the specific citations with respect to Dalo et al, Ryan et al and Ando stating circular tubes and flattened tubes are obvious alternates of one another in fluid couplings.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

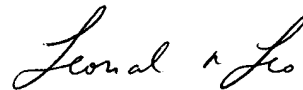
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard R. Leo whose telephone number is (571) 272-4916. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

A handwritten signature in cursive script that reads "Leonard R. Leo".

LEONARD R. LEO
PRIMARY EXAMINER
ART UNIT 3753

August 20, 2005